

EXECUTIVE CHAMBERS

HONOLULU

May 3, 2004

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 267

Honorable Members
Twenty-Second Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 267, entitled "A Bill for an Act Relating to Government."

The purpose of this bill is to repeal certain limitations on the powers of the Office of Elections and the Campaign Spending Commission that are imposed upon administratively attached agencies. The bill would also authorize the Office of Elections and the Campaign Spending Commission to retain their own legal counsel. Additionally the bill would establish an elections commission appointed by members of the Legislature that would appoint the Chief Election Officer and oversee the operations of the Office of Elections.

Attached agencies, boards and commissions, such as the Office of Elections and the Campaign Spending Commission, were created to retain a degree of autonomy in their mission and functions. Current law is ambiguous in defining the level and nature of autonomous actions these "attached agencies" should enjoy. My Administration has honored the intended ability of such agencies, boards and commissions to communicate freely with the legislative branch, the executive branch, and the general public. We have requested, as a courtesy, that these boards keep the Departments to which they are attached apprised of their activities. In many instances boards, commissions, and attached agencies have developed a

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collaborative working relationship that has served the public well.

I must return this bill without my approval because it denigrates these collaborative relationships, would significantly skew representation of the voting public in the election process, and would place two attached agencies, the Campaign Spending Commission, and the Office of Elections, outside the scope of the law.

First, the bill gives appointment power and the power to oversee the Chief Election Officer to elections commissioners who represent only twenty percent of the people of the State. At least six of the nine members of the new elections commission must be residents of the neighbor island counties. As a result, eighty percent of the State's population, residing in the City and County of Honolulu, would be represented by as few as two and no more than three of the nine elections commissioners.

Second, this bill deprives the Governor of any voice in the appointment of the State's Chief Election Officer. The Governor presently appoints one of the five members of the existing Elections Appointment and Review Panel. Under this measure, the Governor would not appoint any of the nine members of the elections commission, which would replace the Elections Appointment and Review Panel. Further, if the elections commission member positions are not filled by the legislators within the times specified, this bill provides that the Chief Justice of the Supreme Court of Hawaii, not the Governor, must appoint the members to fill the vacancies. Because the Supreme Court decides elections cases on a regular basis, it would be inappropriate for the Chief Justice to appoint members to the commission this bill would create, and could blur the

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separation of powers provisions established in the State Constitution.

Third, the bill permits the Office of Elections and the Campaign Spending Commission to make personnel decisions and purchase supplies, equipment, and furniture without the approval of the Comptroller. Further, the Office of Elections, Campaign Spending Commission, and Elections Commission could take these actions without complying with all applicable requirements of the Hawaii Public Procurement Code and applicable personnel laws. Attached agencies should not be allowed to be "above the law" when carrying out their administrative functions.

Pursuant to section 26-38, Hawaii Revised Statutes, the Comptroller has the authority to delegate approval for personnel decisions and purchases to attached agencies, boards, and commissions. This bill's provisions would set an unwarranted precedent.

Finally, this bill erodes consistency and objectivity in the State Government's legal interpretations by authorizing the Office of Elections and the Campaign Spending Commission to employ their own attorneys. It is critical that the legal advice given to those agencies be consistent with that given to other State agencies and with the interests of the State of Hawaii. Retention of separate counsel would likely result in inconsistent advice. Also, because the subject matter of these agencies involves political issues that affect predominantly members of the Legislature, it is important to assure that legal advice is not unduly influenced by what the agencies want to hear, rather than by sound legal analysis. This bill increases the risks of undue influence, especially because the

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attorneys would serve at the agencies' pleasure and would be paid by the agencies.

For the foregoing reasons, I am returning House Bill No. 267 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii